

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOHN L. BATIE,

Petitioner,

v.

RANDY GROUNDS, Warden,

Respondent.

No. C 10-3089 MMC (PR)

**ORDER TO SHOW CAUSE;  
DENYING REQUEST FOR  
APPOINTMENT OF COUNSEL;  
GRANTING LEAVE TO PROCEED  
IN FORMA PAUPERIS**

(Docket Nos. 1, 5 & 8)

On July 19, 2010, petitioner, a California prisoner incarcerated at the Correctional Training Facility at Soledad, California, and proceeding pro se, filed the above-titled petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging the Governor's reversal of a parole grant by the California Board of Parole Hearings ("Board").

**BACKGROUND**

In 1981, in the Superior Court of San Diego County, petitioner was found guilty of second degree murder. He was sentenced to a term of seventeen years to life in state prison. On February 4, 2009, the Board, for the fourth time, found petitioner suitable for parole. On July 3, 2009, Governor Schwarzenegger reversed the Board's decision, which determination constituted the fourth time the Board's decision to grant petitioner parole was reversed at the Governor's level of review. Petitioner's subsequent state habeas corpus petitions challenging

Governor Schwarzenegger's 2009 decision were denied, respectively, by the California Court of Appeal on March 9, 2010, and the California Supreme Court on June 17, 2010.

### DISCUSSION

#### A. Standard of Review

This Court may entertain a petition for a writ of habeas corpus "in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a); Rose v. Hodges, 423 U.S. 19, 21 (1975). A district court shall "award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto." 28 U.S.C. § 2243. Summary dismissal is appropriate only where the allegations in the petition are vague or conclusory, palpably incredible, or patently frivolous or false. See Hendricks v. Vasquez, 908 F.2d 490, 491 (9th Cir. 1990) (quoting Blackledge v. Allison, 431 U.S. 63, 75-76 (1977)).

#### B. Petitioner's Claim

Petitioner claims the Governor's reversal of the Board's decision to grant parole violated his federal constitutional right to due process because it was not based on some evidence that petitioner's release would pose an unreasonable risk to public safety. Liberally construed, petitioner's claim is cognizable.

#### C. Request for Appointment of Counsel

Petitioner requests appointment of counsel to represent him in the instant action. The Sixth Amendment's right to counsel does not apply in habeas actions. Knaubert v. Goldsmith, 791 F.2d 722, 728 (9th Cir.), cert. denied, 479 U.S. 867 (1986). Pursuant to statute, however, a district court is authorized to appoint counsel to represent a habeas petitioner whenever "the court determines that the interests of justice so require and such person is financially unable to obtain representation." See 18 U.S.C. § 3006A(a)(2)(B).

Here, petitioner's claims have been adequately presented in the petition. Moreover, the exhibits lodged in support of the petition include the briefs prepared and filed on

petitioner's behalf by court-appointed habeas counsel in the California Court of Appeal. Consequently, the interests of justice do not require appointment of counsel in the instant case at this time. Should the circumstances change materially at a later stage of the litigation, the Court will reconsider this decision sua sponte. Accordingly, the request for appointment of counsel will be denied.

D. Request to Proceed In Forma Pauperis

Petitioner seeks leave to proceed in forma pauperis herein. Good cause appearing, the request will be granted.

**CONCLUSION**

For the reasons stated above, the Court orders as follows:

1. Petitioner's request for appointment of counsel is hereby DENIED.
2. Petitioner's request to proceed in forma pauperis is hereby GRANTED.
3. The Clerk shall serve by certified mail a copy of this order and the petition, along with the exhibits lodged in support thereof, upon respondent and respondent's counsel, the Attorney General for the State of California. The Clerk shall also serve a copy of this order on petitioner.
4. Respondent shall file with the Court and serve on petitioner, within **ninety (90)** days of the date this order is filed, an answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted based on petitioner's cognizable claims. Respondent shall file with the answer and serve on petitioner a copy of all portions of the state trial record that have been transcribed previously and that are relevant to a determination of the issues presented by the petition.
- If petitioner wishes to respond to the answer, he shall do so by filing a traverse with the Court and serving it on respondent within **thirty (30)** days of the date the answer is filed.
5. In lieu of an answer, respondent may file, within **ninety (90)** days of the date this order is filed, a motion to dismiss on procedural grounds, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing Section 2254 Cases. If respondent files

1 such a motion, petitioner shall file with the Court and serve on respondent an opposition or  
2 statement of non-opposition within **thirty (30)** days of the date the motion is filed, and  
3 respondent shall file with the Court and serve on petitioner a reply within **fifteen (15)** days of  
4 the date any opposition is filed.

5 6. Petitioner is reminded that all communications with the Court must be served on  
6 respondent by mailing a true copy of the document to respondent's counsel.


7 7. It is petitioner's responsibility to prosecute this case. Petitioner must keep the  
8 Court and respondent informed of any change of address and must comply with the Court's  
9 orders in a timely fashion. Failure to do so may result in the dismissal of this action for  
10 failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

11 8. Upon a showing of good cause, requests for a reasonable extension of time will be  
12 granted as long as they are filed on or before the deadline they seek to extend.

13 This order terminates Docket Nos. 1, 5 and 8.

14 IT IS SO ORDERED.

15 DATED: November 19, 2010

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17 MAXINE M. CHESNEY  
18 United States District Judge  
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